



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

LVO/158437

PRELIMINARY RECITALS

Pursuant to a petition filed June 17, 2014, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Other, a hearing was held on July 17, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a levy against the Petitioner for unpaid public assistance debt.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Lareina Horton

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On October 6 and 7, 2010, the agency issued Child Care Overpayment Notices to the Petitioner informing her that the agency would seek to recover an overissuance of child care benefits in the

amount of \$8,375 for the period of June 1, 2009 – September 30, 2009. The notice also informed the Petitioner of the right to a hearing by filing an appeal within 45 days of the date of the notice. On November 2, 2010, a repayment agreement was sent to the Petitioner.

3. On May 3, 2011, June 2, 2011 and July 5, 2011, the agency issued dunning notices to the Petitioner.
4. On April 19, 2011, the Petitioner filed an appeal of the child care overpayment action. The Petitioner failed to appear for the hearing and an order of dismissal based on abandonment was issued.
5. On August 12, 2011, the agency issued a tax intercept notice to the Petitioner.
6. On May 23, 2014, the agency issued a levy notice to the Petitioner informing her that the agency has issued a levy for delinquent child care and/or W-2 debts. The notice also informed the Petitioner that she can request a hearing by filing an appeal within 21 days of the date of the notice with the Division of Hearings and Appeals.
7. On June 17, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by an agency concerning a child care overpayment must be filed within 45 days of the date of the notice. DCF Child Care Manual § 2.1.5.3. An appeal of a levy action must be filed within 21 days of the date of the notice. Wis. Stats. § 49.195(3s) and Wis. Admin. Code § DCF 201.04(5)(ep). The petitioner's appeal was filed almost 4 years after the date of action for the child care overpayment. It was filed 25 days after the date of the levy notice. At the hearing, the Petitioner testified she did receive the notices. Based on the testimony and evidence, I conclude the Petitioner's appeal was untimely and no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

The appeal is untimely.

THEREFORE, it is

ORDERED

The Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of September, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 16, 2014.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit